S.B.Civil Revision Petition No.809/2000

Jaswant Singh.
vs.
Madan Lal and others.

Date : 18.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. R Purohit, for the petitioner.
Mr. JK Bhaiya, for the respondents

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At the request of learned counsel for the parties, the revision petition is heard finally.

The petitioner is aggrieved against the order dated 30.10.2000 by which the court below allowed the application filed by the respondents/appellants under Order 22 Rule 4 (4) CPC and exempted the respondents from bringing on record the legal representatives of Sattar Bux who was defendant no.10 in the suit. The court below by this very order also rejected the application of the present petitioner (respondent before the appellate court) filed for dismissal of the appeal on the ground of abatement due to death of Sattar Bux.

According to learned counsel for the petitioner, the court below proceeded on assumption that Sattar Bux died during the pendency of first appeal whereas in fact, Sattar

Bux died during the pendency of the suit on 1.1.1985 and the suit was decided by the trial court in the year 1999. According to learned counsel for the petitioner, the appeal against Sattar Bux preferred by the plaintiff/respondent was nullity. It is also submitted that the benefit of Order 22 Rule 4(4) CPC was not available to the appellant because the appellant had knowledge of death of Sattar Bux and he submitted an application in the first appeal on 28.8.1999 stating therein that Sattar Bux died during pendency of the suit, therefore, the decree passed by the trial court is nullity though the appellant before the first appellate court himself was the plaintiff. It is also submitted that in view of the provisions made in Order 22 Rule 4(4) CPC, the first appellate court could not have allowed the respondent to seek exemption under Order 22 Rule 4(4) CPC.

I have considered the submissions of learned counsel for the petitioner and perused the facts of the case.

As per the petitioner himself, Sattar Bux died during the pendency of the suit and has not died during pendency of the first appeal, therefore, there cannot arise any question of abatement of appeal. So far as bringing of legal representatives of Sattar Bux on record is concerned, appropriate procedure would have been under Order 1 Rule 10 CPC, if needed. Be that as it may be. Even Sattar Bux was impleaded as party in the first appellate court, then the appeal against that dead person alone can be nullity and not against all the respondents. So far as continuation of

appeal is concerned, for that purpose, legal representatives of Sattar Bux could have been impleaded as party, if any case is made out by the respondent. So far as exemption granted by the first appellate court for bringing on record the legal representatives of Sattar Bux is concerned, that is a discretionary order in view of the fact that the Court has taken note of fact that the suit was not contested by Sattar Bux. In such a discretionary order, this Court is not inclined to interfere under Section 115 CPC while exercising revisional jurisdiction.

So far as objection about nullity of the decree passed by the trial court or abatement of suit due to death of Sattar Bux are concerned, those are the grounds which are very much available to the present petitioner which can be raised by him during the course of arguments in appeal.

In view of the above discussion, I do not find any merit in the revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya